PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
TUESDAY, JANUARY 3, 2023

These are the tentative rulings for civil law and motion matters set at **8:30 a.m. on Tuesday, January 3, 2023**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Friday, December 30, 2022**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE TRISHA J. HIRASHIMA** and if oral argument is requested, it will be heard in **Department 31**, located at 10820 Justice Center Drive, Roseville, California.

PLEASE NOTE: REMOTE APPEARANCES ARE STRONGLY ENCOURAGED FOR ALL CIVIL LAW AND MOTION MATTERS. (Local Rule 10.24.) More information is available at the court's website: www.placer.courts.ca.gov.

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1. M-CV-0082034 Black Rock Real Estate Investmts LLC v. Zadourian, Violet

Motion to Consolidate

Carinay Tucker, plaintiff in S-CV-0048996 and defendant in M-CV-0082034, moves to consolidate these two cases. The former is an anti-foreclosure case alleging three causes of action: (1) a violation of Civil Code section 2924m, (2) elder financial abuse, and (3) declaratory relief. The latter is an action for residential unlawful detainer against Tucker and another defendant. The court may order consolidation of actions involving a common question of law or fact. (Code Civ. Proc., § 1048, subd. (a).) Here, both matters involve the same real property known as 8021 Eagle View Lane, Granite Bay, CA 95746. Tucker contends she is entitled to continued possession of the premises as equitable or legal owner of the subject property by virtue of her having been deemed the last and highest bidder as a statutorily eligible tenant buyer under Civil Code section 2924m. The court finds there are common issues of fact and law between these two cases.

"[T]itle issues generally cannot be raised in unlawful detainer actions. [Citation.] 'However, where title is acquired through [section 1161a proceedings], courts must make a limited inquiry into the basis of the plaintiff's title.' [Citation.]" (*Struiksma v. Ocwen Loan Servicing, LLC* (2021) 66 Cal.App.5th 546, 554, citations omitted.) When "an unlawful detainer proceeding and an unlimited action concerning title to the property are

simultaneously pending, the trial court in which the unlimited action is pending may stay the unlawful detainer action until the issue of title is resolved in the unlimited action, or it may consolidate the actions. [Citation.]" (*Martin-Bragg v. Moore* (2013) 219 Cal.App.4th 367, 385, citing Friedman et al., Cal. Practice Guide: Landlord-Tenant (The Rutter Group 2012).) Here, while Ms. Tucker would be afforded a limited inquiry into title in the unlawful detainer matter, it appears to the court she would not be able to present a full defense without the relief sought.

For the foregoing reasons, the motion to consolidate is granted. S-CV-0048996 is ordered consolidated with M-CV-0082034 and the lead case is designated as S-CV-0048996.

Black Rock Real Estate Investments, LLC ("Black Rock") requests the court order Ms. Tucker to make a deposit pursuant to Code of Civil Procedure section 1170.5(c) to account for the delay. However, such an order must be premised on a finding that there is reasonable probability that Black Rock will prevail. The court cannot make such a finding at this time, and the request is denied without prejudice.

2. M-CV-0082555 Highland by Vintage LP v. Mitchell, Amadeus

Defendants are advised the notice of motion must include notice of the court's tentative ruling procedures. (Local Rule 20.2.3(c).)

Demurrer to Complaint

As a preliminary matter, plaintiff's opposition was untimely filed. The court exercises its discretion to consider all briefing in this matter.

Plaintiff's request for judicial notice is granted.

A party may demur where the pleading does not state facts sufficient to constitute a cause of action or when the complaint is uncertain. (Code Civ. Proc. § 430.10, subds. (e), (f).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. (*Bader v. Anderson* (6th Dist. 2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed true no matter how improbable they may seem. (*Del E. Webb Corp. v. Structural Materials Co*. (2d Dist. 1981) 123 Cal.App.3d 593, 604.) However, the court does not assume the truth of contentions, deductions, or conclusions of facts or law. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.)

Plaintiff alleges all three named defendants leased the premises on August 3, 2018 and agreed to rent of $1,232 per month. (Complaint, ¶ 6a.) The written agreement is attached to the complaint as exhibit 1 and shows tenants and signatories to the agreement as Amadeus Mitchell and Megan Mellinger only. Plaintiff further alleges effective September 1, 2021, the parties agreed to a rent increase to $1,383 per month. (Complaint, ¶ 6d.) The alleged rent increase is not attached. Plaintiff alleges the tenancy was

terminated for at-fault just cause for nonpayment of rent and breach of covenants. (Complaint, ¶ 7b; Exhibit 2.)

A complaint for residential unlawful detainer shall attach a copy of the written lease agreement and any addenda or attachments thereto that form the basis of the complaint. (Code Civ. Proc., § 1166, subd. (d)(1)(B).) However, these documents need not be submitted with the complaint if (i) the agreement is oral, (ii) the landlord does not possess the agreement, or (iii) the action is based solely on nonpayment of rent. (Code Civ. Proc., § 1166, subd. (d)(1)(B)(i)–(iii).) Here, plaintiff does not allege an oral modification or that it does not possess the document (complaint, ¶ 6f); further, plaintiff alleges at-fault just cause on two bases: nonpayment of rent and breach of covenants. Accordingly, no exception applies and the rent-increase modification should be attached to the complaint. "If the plaintiff fails to attach the documents required by this subdivision, the court shall grant leave to amend the complaint for a five-day period in order to include the required attachments." (Code Civ. Proc., § 1166, subd. (d)(2).)

For this reason, the demurrer is sustained and plaintiff is granted leave to amend. The court has considered defendants' remaining arguments, but finds they lack merit and/or are not appropriate grounds to sustain a demurrer. Any amended complaint shall filed and served on or before January 13, 2023

3. S-CV-0040701 Burgess, Nora v. Newcombe, Elliott

The motion to tax costs is continued to be heard **February 7, 2023 at 8:30 a.m. in Department 31 by the Honorable Linda Clark**.

4. S-CV-0042129 Michael, Jerry A v. FCA US LLC

Plaintiff's motion for attorney fees, costs and expenses

Ruling on objections

Plaintiff's objections are overruled.

Ruling on motion

The motion for attorney fees, costs, and expenses is granted in part. Plaintiff seeks fees, costs, and expenses pursuant to Civil Code section 1794(d) after accepting a settlement offer from defendants. Under that section, fees "determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action" are recoverable by a prevailing plaintiff. Defendants oppose the requested fees and costs and expenses. In the current request, plaintiff seeks $440,677.00 in attorney fees plus a .5 enhancement multiplier of $220,368.50, plus costs and expenses of $47,760.39, totaling $708,775.89.

Determination of reasonable fees begins with the lodestar method where in the court determines the number of hours reasonable expended, multiplied by reasonable hourly rates. *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48-49. The court may adjust lodestar figures based on factors specific to the case so that fees are set at a fair market rate. *Drexler*, supra, at 1095.

Plaintiff seeks recovery for the work of 21 different attorneys at two different law firms, at rates ranging from $200 per to $1,100 per hour, as well as for work of three paralegals at $250 per hour. Reasonable attorney fees are those which are "prevailing in the community for similar work." *Id.* In the court's experience, the rates set forth below are commensurate with maximum reasonable rates charged in Placer County, including for other cases of this type. The court recognizes that attorney rates vary over time; the court finds the following rates to be reasonable maximum during the duration of this litigation:

> Partners (A Morse, L Ungs, R Boucher, M Weitz): $425 per hour
>
> Non-partner senior attorneys (senior attorney, senior trial attorney) (J Cutler, G Mohrman, J Mukai, K Edwards): $350 per hour
>
> Non-partner associate attorneys and of counsel (associate, counsel, of counsel) (S Samra, M Melero, A Lopez, D Kalinowski, D Hernandez, K Stephenson-Cheang, M Colón, N Fisher, S Benson, Z Powell, T Eggitt, N Butala, A Gamez): $300 per hour
>
> Paralegals (M Galivn, T Yue, S Haro): $150 per hour

Rates exceeding these amounts are not reasonable; hours billed at lower rates are included below at those lesser rates. The court determines that this case did not present particularly complex or unique issues which would justify higher billing rates; in particular, the court notes that the substantial litigation work arose from discovery disputes which were not particularly novel or complex.

Turning to the question of whether the number of hours billed were reasonable, Civil Code section 1794(d) requires the court "to make an initial determination of the actual time expended; and then to ascertain whether under all the circumstances of the case, the amount of actual time expended and the monetary charge being made for the time expended are reasonable." *Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 104. The factors to be considered by the court include "the complexity of the case and procedural demands, the skill exhibited and the results achieved." *Id.* A prevailing plaintiff has the burden of "showing that the fees incurred were 'allowable,' were 'reasonably necessary to the conduct of the litigation,' and were 'reasonable in amount.' *Levy v. Toyota Motor Sales, U.S.A., Inc.* (1992) 4 Cal.App.4th 807, 816.

The court has reviewed the billing statements, the pleadings filed in support of and in opposition to the current motion, and the entire file in this action. The court is readily familiar with this action. The case does not demonstrate the level of sophistication that would require 21 attorneys billing for services. "In evaluating whether the attorney fee

request is reasonable, the trial court should consider whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended . . . . Reasonable compensation does not include compensation for 'padding' in the form of inefficient or duplicative efforts . . . ." *Morris v. Hyundai Motor America* (2019) 41 Cal.App.5th 24, 38. The court must be vigilant in assessing reasonableness of claimed fees. *Id.* Based on the court's review of the record including the billing statements provided by plaintiff and the arguments of the parties, the court concludes that the time billed by counsel should be reduced as indicated below.

Attorney	Rate	Hours billed	Reduction	Fees
R Kirnos		0		$0
A Morse	$350 / hr	9.3	(2.7)	$2,310.00
	$400 / hr	2.0	(1.4)	$560.00
	$425 / hr	0.1	(0.1)	$0.00
J Cutler	$350 / hr	14.5	(2.3)	$4,270.00
S Samra	$225 / hr	28.7	(4.9)	$5,355.00
	$270 / hr	8.8	(1.4)	$1,998.00
	$300 / hr	2.0	(0.3)	$600.00
M Melero	$225 / hr	7.5	(0.8)	$1,507.50
	$300 / hr	7.1	(0.8)	$1,890.00
A Lopez	$200 / hr	4.5	(0.0)	$900.00
D Kalinowski	$250 / hr	9.7	(1.1)	$2,150.00
D Hernandez	$300 / hr	12.5	(4.5)	$2,400.00
G Mohrman	$350 / hr	22.7	(2.5)	$7,070.00
J Mukai	$350 / hr	3.5	(0.6)	$1,015.00
K Edwards	$350 / hr	2.3	(0.7)	$560.00
K Stephenson-Cheang	$300 / hr	10.7	(0.0)	$3,210.00
L Ungs	$425 / hr	4.3	(1.5)	$1,190.00
M Colón	$300 / hr	2.7	(1.0)	$510.00
N Fisher	$250 / hr	9.9	(4.35)	$1,387.50
S Benson	$200 / hr	16.2	(0.8)	$3,080.00
Z Powell	$250 / hr	5.9	(2.45)	$862.50
Subtotal for Knight Law Group LLP				**$42,825.50**
R Boucher	$425 / hr	120.3	(22.4)	$41,607.50
M Weitz	$425 / hr	157.70	(34.95)	$52,168.75
T Eggitt	$300 / hr	28.9	(0.3)	$8,580.00
N Butala	$300 / hr	181.30	(50.6)	$39,210.00
A Gamez	$300 / hr	21.6	(7.8)	$4,140.00
M Galvin, T Yue, S Haro	$125 / hr	119.7	(0.0)	$14,962.50
Subtotal for Boucher LLP				**$160,668.75**
Total attorney fees				**$203,494.25**

The court determines that no multiplier is warranted based on the work performed in this case. The request for costs and expenses is adjudicated in the motion to tax costs, below.

Defendants' motion to tax costs

Ruling on objections

Defendants' objections are overruled.

Ruling on motion

Defendants seek to tax certain costs included in plaintiff's $47,760.39 costs memorandum. The motion is granted in part. The court has carefully considered the moving and opposition papers and the entire record in this matter. The court grants the request to tax costs related to non-appearance deposition records in part in the amount of $1,200.00; expert witness fees in part in the amount of $2,000.00; and other charges including messenger / courier fees, a hearing transcript charge, an ex parte CAP appearance, travel costs, copies, and research charges in part, totaling $7,390.76.

All other requests to tax costs are denied.

Costs are thus disallowed in the total amount of $10,590.76 and recoverable in the amount of $37,169.63.

Plaintiff's request for additional attorney fees for opposing the motion is denied.

5. S-CV-0043567 Alves, Steven G v. Feinberg, Herbert

Motion for Summary Adjudication as to Liability on the First and Second Causes of Action

Rulings on Objections and Request for Judicial Notice

Defendants' objections to evidence submitted in support of plaintiff's motion are sustained in their entirety. Defendants' objections to evidence submitted in support of plaintiff's reply are overruled. Plaintiff's request for judicial notice is granted as to Exhibits A and B.

Ruling on Motion

Plaintiff Steven Alves seeks summary adjudication as to his first cause of action for breach of contract and second cause of action for misappropriation of trade secrets. A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim

for damages, or an issue of duty. (Code of Civil Procedure section 437c(f)(1).) The party moving for summary judgment or summary adjudication bears the burden of persuasion that there is no triable issue of material fact and that it is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Company*, (2001), 25 Cal.4th 826, 850.) A determination of liability alone does not completely dispose of the cause of action. (*Paramount Petroleum Corporation v. Superior Court* (2014) 227 Cal.App.4th 226, 242.)

As to both the first and second causes of action, plaintiff fails to satisfy his burden as the moving party. An essential element of a breach of contract claim is resulting damages to the plaintiff. An essential element of a claim for misappropriation of trade secrets is a showing that defendant's actions damaged plaintiff. Plaintiff's separate statement fails to address the element of damages with respect to either cause of action, and plaintiff fails to submit admissible evidence establishing damages based on defendants' alleged breach of contract or misappropriation of trade secrets. Furthermore, plaintiff's motion and separate statement do not distinguish between the several defendants. New evidence and argument offered in reply cannot appropriately be considered by the court in determining whether plaintiff's moving papers satisfy his burden of persuasion.

The motion for summary adjudication is denied.

6. S-CV-0043619 Easton, Jennifer Jo v. Rawlins, Shawn L

Plaintiff's Motion for Summary Adjudication

Plaintiff Jennifer Jo Easton moves for summary adjudication of the fourth and fifth counts of the first cause of action of the second amended complaint.

Evidentiary Rulings

Defendant's objection to Exhibit 3 to the declaration of Eleanor G. Wolf is sustained. Defendant's objections are otherwise overruled.

Defendant's request for judicial notice is granted as to the fact that Daniel McLain's declaration in support of motion for preliminary injunction was filed on June 25, 2020 and Andrew R. Cassano's declaration was filed August 10, 2020, but not as to the truth of the assertions contained therein.

Plaintiff's objection number 21 is sustained. Plaintiff's objections are otherwise overruled.

As plaintiff correctly points out, defendant's responses to plaintiff's SSUMF and defendant's SSDMF are not formatted correctly. (Cal. Rules of Court, rule 3.1350.) The court declines, however, to rule on the merits of the motion based on this procedural deficiency.

Ruling on the Motion

A party may move for summary adjudication as to one or more causes of action if the party contends there is no affirmative defense to the cause of action. (Code Civ. Proc., § 437c, subd. (f)(1).) The moving party bears the initial burden of establishing each element of the cause of action entitling them to judgment as a matter of law. (*Id.* subds. (f)(1), (p)(1).) Only if this initial burden is met will the burden shift to the opposing party to establish a triable issue of material fact. (*Id.* subd. (p)(1).) In reviewing a motion for summary adjudication, the court must view the supporting evidence and all reasonable inferences drawn from the evidence in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) Summary adjudication shall not be granted based on inferences reasonably deducible from the evidence if contradicted by other inferences that raise a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (c).) The court reviews the motion with these principles in mind.

In the first cause of action for quiet title, plaintiff alleges in her fourth count a prescriptive easement formed when, for a 5 year period, (1) plaintiff's predecessors has been using Pepper Ranch Road across defendant's property for the purposes of reaching Clipper Gap Road, and the use was (2) continuous and uninterrupted, (3) open and easily observable, and (4) without defendant's / defendant's predecessors' permission. (*McLear-Gary v. Scott* (2018) 25 Cal.App.5th 145, 159; CACI 4901.) Permission may be express or implied. (*Richmond Ramblers Motorcycle Club v. Western Title Guaranty Co.* (1975) 47 Cal.App.3d 747, 754.)

Plaintiff presents evidence plaintiff's predecessor Ms. Wolf had been using Pepper Ranch Road to reach Clipper Gap Road from 1986 to 2017 on a daily basis. (SSUMF 40, 47.) Plaintiff presents evidence Ms. Wolf's use of Pepper Ranch Road had never been interfered with by defendant's predecessor, she had never been told her use was permissive, nor had she ever asked permission to use Pepper Ranch Road. (SSUMF 41–43, 48–49.) Plaintiff presents evidence, and defendant presents the same, that two signs are posted on the disputed portion of Pepper Ranch Road:

(SSUMF 53–56B; Decl. Eleanor Wolf, Exh. 1; Pltf's SSUMF 27; Decl. Shawn Rawlings, Exh. A.) "The two signs did not state use of Pepper Ranch Road by the parties named on the two signs was allowed by permission." (SSUMF 55.) There are multiple inferences to be drawn from the evidence presented. Plaintiff contends this evidence sufficiently infers a lack of permission. Looking to the inference defendant draws, however, that the signs granted permission to the listed individuals, is also a reasonable inference that contradicts

the inference plaintiff draws. As the court must review evidence from which inferences are drawn in the light most favorable to the opposing party, *Aguilar v. Atlantic Richfield Company*, *supra*, 25 Cal.4th at p. 843, and conflicting inferences can raise a triable issue of material fact, the motion for summary adjudication as to this count is denied.

In the fifth count of plaintiff's first cause of action for quiet title, plaintiff alleges, in the alternative, if no easement by prescription exists, then the location of the easement has been relocated by agreement of the parties. The location of an easement may be changed by agreement of the parties. (*Youngstown Steel Products Co. of Cal. v. City of Los Angeles* (1952) 38 Cal.2d 407, 411.) Such an agreement may be express or implied. (*Johnstone v. Bettencourt* (1961) 195 Cal.App.2d 538, 541–52.) Here, plaintiff presents no evidence of an express agreement to move the boundary line easements. (SSUMF 67–99.) Plaintiff does present evidence that the boundary line easements did not allow travel to Clipper Gap Road and so the parties used Pepper Ranch Road daily from 1986 to 2006. (SSUMF 93–95, 97–99.) Plaintiff contends the inference to be drawn from this evidence is the parties impliedly agreed to relocate the easement. While that may be a reasonable inference, defendant presents a conflicting inference that there was no need to relocate the easements because the private driveway already existed and it could be used by permission. The conflicting inference raises a triable issue of material fact and the motion for summary adjudication as to this count is also denied.

7. S-CV-0045841 Hoekstra, David v. Avdeyuk, Vladimir

Plaintiffs are advised the notice of motion must include notice of the court's tentative ruling procedures. (Local Rule 20.2.3(c).)

Plaintiffs' Motion to be Released from Arbitration

Plaintiffs filed a notice of stay of proceedings due to contractual arbitration on August 8, 2022. At that time, no motion to compel arbitration had been made or granted. Plaintiffs now seek a court order releasing them from arbitration unless it is to be paid for by the opposing party. Plaintiffs rely on *Weiler v. Marcus & Millichap Real Estate Investment Services, Inc.* (2018) 22 Cal.App.5th 970 for the proposition that when a party is unable to afford to continue arbitration, that party may seek relief from the superior court. However, the *Weiler* case involved a party who had engaged in arbitration in good faith for years. Plaintiffs present no evidence they have engaged in arbitration. Plaintiffs present no evidence of the cost of arbitration. Accordingly, plaintiffs' motion to be released from arbitration is denied, without prejudice, as premature.

Defendant's Motion to Compel Arbitration

Defendant's request for judicial notice is granted.

The arbitration statutes evidence a strong public policy in favor of arbitration that is frequently approved and enforced by the courts. (*Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 706; *Laswell v. AG Seal Beach, LLC* (2d Dist. 2010) 189

Cal.App.4th 1399, 1405.) Under both federal and state law, a threshold question for any petition to compel arbitration is whether there exists an agreement to arbitrate. (*Cruise v. Kroger Co.* (2d Dist. 2015) 233 Cal.App.4th 390, 396.) It is the petitioner that carries this initial burden of proving, by a preponderance of the evidence, the existence of a valid arbitration agreement. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) "'[A] party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'" (*AT&T Technologies v. Communications Workers* (1986) 475 U.S. 643, 648; *see Cronus Investments, Inc. v. Concierge Svcs.* (2005) 35 Cal.4th 376, 384–85.)

In support of its motion, defendant provides the Home Improvement Contract ("the contract") signed by all parties. (Decl. Vladimir Adveyuk, Exh. A.) The contract includes an arbitration provision, entitled "Arbitration of Disputes." (*Id.*, sec. XVIII.) The arbitration provision applies to "any dispute arising out of or related to the performance of the work under this contract." (*Ibid.*) Below the arbitration provision is a section advising "agreement to this arbitration provision is voluntary," and that "we have read and understand the foregoing and agree to submit disputes arising out of the matters included in the 'arbitration of disputes' provision to neutral arbitration." (*Ibid.*) The parties have initialed the arbitration provision. (*Ibid.*) The contract clearly includes an arbitration provision that is broad and would apply to plaintiffs' claims in their first amended complaint.

For the foregoing reasons, defendant made a sufficient showing of a valid and enforceable arbitration agreement between the parties. Plaintiffs did not file an opposition to defendant's motion, but they did file their own motion to be relieved from arbitration which the court can and does consider as an opposition. Despite their arguments they lack the financial ability to participate in arbitration, plaintiffs do not demonstrate any defense to enforcement, such as unconscionability.

Accordingly, defendant's motion to compel arbitration is granted. The action is stayed pending the outcome of the arbitration. The case management conference set March 20, 2023 is hereby vacated. The court sets an Order to Show Cause re status of arbitration on **June 26, 2023 at 3:30 p.m. in Department 40**.

8. S-CV-0046091 Bakos, Matthew C v. Roach, William

Rulings on Objections

Plaintiff's objections to the Roach declaration numbers 2, 4, and 5, objections to the Frieborn declaration number 9, and objections to the Jasper declaration number 3 are sustained. All other objections are overruled.

Defendants' objections numbers 5, 8-12, 14-19, 21, 22, 24, 26-33, and 36-56 are sustained, all other objections are overruled.

Ruling on Motion for Summary Judgment

A party is entitled to bring a motion for summary judgment where there are no triable issues of fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) The defendant bears the initial burden of establishing that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (Id. subd. (p)(2).) Only when this initial burden is met does the burden shift to the opposing party to show a triable issue of material fact. (Ibid.) A party may move for summary adjudication as to one or more causes of action if the party contends the cause of action has no merit. (*Id.* subd. (f)(1).) A party may move for summary adjudication as an alternative to summary judgment and shall proceed in all procedural respects as a motion for summary judgment. (*Id.* subd. (f)(2).) In reviewing a motion for summary judgment, the court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) The court reviews the motion with these principles in mind.

Defendants first put forward the complete defense of governmental immunity for their actions in this matter. Government Code § 815 provides that a "public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." Gov. Code § 815. Additionally, "a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." (Gov. Code §820.2.). Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty. (Gov. Code §815.6).

Defendants argue that they executed and seized plaintiff's animals pursuant to Penal Code §597.1, therefore their actions are protected by their immunity. Penal Code § 597.1 (a) (1) provides that "[e]very owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor. Any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with the provisions of subdivision (g). (emphasis added.) Both subsections (f) and (g) maintain a right to a hearing regarding the seizure. Defendants admit no hearing regarding the seizure was afforded in this case. Instead, plaintiff was expressly told that he was not entitled to an administrative hearing because the seizure was pursuant to a search warrant. (SSUMF 81, Exh. 17.) Defendants fail to establish that as a matter of law the hearing requirement was excused

because the animals were seized pursuant to a search warrant. As defendants fail to show compliance with the requirements of Penal Code section 597.1, they fail to establish governmental immunity applies.

Turning to the first cause of action for negligence, defendants argue that plaintiff cannot demonstrate a duty of care, or breach of any such duty. Plaintiff's complaint alleges that defendants owed him a duty to not cause him personal or financial injury. (Complaint, pgh. 10.) Plaintiff alleges defendants breached their duty by removing certain animals from his property without consent, prior inspection, prior warning, or discussion. (Id., pgh. 11.) The operative pleadings serve as the outer measure of materiality for any summary judgment motion. *Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258. Notwithstanding the arguments in plaintiff's opposition, based on the alleged duty and breach of duty as framed by the complaint, plaintiff fails to establish the requisite elements of negligence, specifically a duty of care and breach.

Nevertheless, given the court's conclusion that defendants do not demonstrate governmental immunity and full compliance with the requirements of Penal Code section 597.1, the court has also examined whether plaintiff's negligence claim could proceed under a negligence per se theory. Evidence Code §669 provides a presumption of the failure of due care, or negligence per se, if all of the following elements are met: 1) defendant violated a statute, ordinance, or regulation of a public entity; 2) the violation proximately caused death or injury to person or property; 3) the death or injury resulted from an occurrence of the nature which the statute, ordinance, or regulation was designed to prevent; and 4) the person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted. However not all violations of a statute constitute negligence per se. The presumption of negligence arises only from the violation of a statute enacted to protect a class of persons of which plaintiff is a member against the type of harm which plaintiff suffered as a result of the violation. *Gilmer v. Ellington* (2008) 159 Cal.App.4th 190, 203.

In this case, assuming for the purpose of this motion that plaintiff can demonstrate a violation of Penal Code section 597.1, resulting in damages based on the loss of his animals, plaintiff still would not be able to establish negligence per se because there is no authority to support the conclusion that he is a member of the class of persons for whose protection the statute was adopted, or that the harm suffered by him in this case is the type of harm the statute was designed to prevent. Rather, the purpose of the statute is to prevent cruelty and mistreatment of animals, and despite plaintiff's assertions that he was wrongfully targeted in this instance, the central purpose of the statute is not to prevent the harm he allegedly suffered by the seizure of the animals.

Accordingly, the court finds that under either a negligence or negligence per se theory, the first cause of action fails as a matter of law as to all defendants. Additionally, as to defendant Fritz, the court notes there is no evidence he had any decision-making

authority with respect to defendant HSSF, and/or involvement in the decision to deprive plaintiff of a hearing.

With respect to the second cause of action for abuse of process, plaintiff's complaint alleges defendants "intended to make money on the seizure of plaintiff's animals by first seizing them and offering to return them for an excessive amount of money, and if the ransom was not paid, to sell the animals, including AKC registered puppies, for a handsome profit." (Complaint, pgh. 18.) To establish this claim, plaintiff must submit admissible evidence showing defendants (1) entertained an ulterior motive in using the process, and (2) committed a willful act in a wrongful manner. *Coleman v. Gulf Ins. Group* (1986) 41 Cal.3d 782, 792. " 'The common law tort of abuse of process arises when one uses the court's process for a purpose other than that for which the process was designed. [Citations.] It has been 'interpreted broadly to encompass the entire range of "procedures" incident to litigation.' [Citation.] [¶] '[T]he essence of the tort [is] . . . misuse of the power of the court; it is an act done in the name of the court and under its authority for the purpose of perpetrating an injustice.' [Citation.]' " (*S.A. v. Maiden* (2014) 229 Cal.App.4th 27, 41).

Plaintiff fails to establish a triable issue of material fact as to whether defendants, or any of them, entertained an ulterior motive in using the process set forth in Penal Code section 597.1 to seize the animals from plaintiff's property. While plaintiff alleges that defendants intended to financially profit from seizing plaintiff's animals, there is no evidence they intended to, or did in fact profit. Rather, the "ransom" as alleged by plaintiff consisted of notice expressly countenanced by Penal Code section 597.1(h). Defendants cannot be held liable for abuse of process based on a notice which complied with statutory requirements. Further, as with the first cause of action, there is no evidence at all supporting this claim as to defendant Fritz.

Based on the foregoing, defendants' motion for summary judgment is granted.

9. S-CV-0046395 Hession, Michael v. Bernard, Michael

The motion for judicial preference is dropped as no moving papers were filed with the court.

10. S-CV-0046755 Marr, Calvin v. Palmer, William S

Defendant's Motion to Consolidate Arbitration

Defendant's request for judicial notice is granted.

Defendant William S. Palmer moves to consolidate Placer County unlimited civil case number S-CV-0046755 with the American Arbitration Association case number 01-21-0003-5597. The court may consolidate a court action with an arbitration proceeding where the matters arise out of the same transaction and there is a possibility of conflicting rulings between the two forums. (Code Civ. Proc., § 1281.2, subd. (c); *Mercury Ins.*

Group v. Superior Court (1998) 19 Cal.4th 332; see also Code Civ. Proc., § 1048 [authorizing the court to consolidate actions "involving a common question of law or fact"].) Here, the court finds both actions involve common questions of law and fact and there is a possibility of conflicting outcomes between the arbitration and the Superior Court action. Further, plaintiff does not oppose consolidation.

For the foregoing reasons, the motion to consolidate is granted. The lead case is designated as S-CV-0046755.

11. S-CV-0047359 Smartrise Eng. Inc. v. Lift Control Eng. Inc.

The motion to compel compliance is continued to **Tuesday, January 24, 2023 at 8:30 a.m. in Department 31**. The court apologizes to the parties for the inconvenience.

12. S-CV-0047697 Joiret, Ken v. Alpine Holdings Inc.

Motion to Compel Plaintiffs to Answer Written Discovery, Produce Documents, Deem Facts Admitted, and Award Sanctions.

Defendants' unopposed motion to compel responses to form interrogatories, set one and special interrogatories, set one is granted. Plaintiffs are ordered to serve verified responses to the subject discovery no later than January 20, 2023.

Defendants' unopposed motion to compel responses to request of documents, set one, is granted. Plaintiffs are ordered to serve verified responses and responsive documents to requests for production, set one, no later than January 20, 2023.

Defendants' unopposed motion to deem admitted requests for admission, set one is granted. The matters set forth in defendants requests for admission, set one, are deemed admitted by plaintiffs.

Defendants' request for sanctions is denied as the notice of motion fails to cite the appropriate legal authority for the request, and fails to identify the person, party and/or attorney against whom the sanctions are sought. Code Civ. Proc. 2023.040; Local Rule 20.2.4(E).

13. S-CV-0047741 Halterbeck, Stephen v. Avilla, Joel Alixe

Motion to compel arbitration

This motion is denied.

The court has previously issued orders on this matter. The court encourages the parties to continue to work together to find a time for arbitration that is convenient for all. Pursuant to this decision, the request for attorney's fees is also denied.

14. S-CV-0048691 DaRosa, Jon v. Lowes Home Improvement

The motion to compel compliance is continued to **Tuesday, January 17, 2023 at 8:30 a.m. in Department 31**. The court apologizes to the parties for the inconvenience.

15. S-CV-0048697 Thurston, Sarah v. Place Industries

Defendant is advised the notice of motion must include notice of the court's tentative ruling procedures. (Local Rule 20.2.3(c).)

Motion to Compel Arbitration and to Dismiss

Plaintiff's objections are overruled.

The arbitration statutes evidence a strong public policy in favor of arbitration that is frequently approved and enforced by the courts. (*Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 706; *Laswell v. AG Seal Beach, LLC* (2d Dist. 2010) 189 Cal.App.4th 1399, 1405.) Under both federal and state law, a threshold question for any petition to compel arbitration is whether there exists an agreement to arbitrate. (*Cruise v. Kroger Co.* (2d Dist. 2015) 233 Cal.App.4th 390, 396.) It is the petitioner that carries this initial burden of proving, by a preponderance of the evidence, the existence of a valid arbitration agreement. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) "'[A] party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'" (*AT&T Technologies v. Communications Workers* (1986) 475 U.S. 643, 648; *see Cronus Investments, Inc. v. Concierge Svcs.* (2005) 35 Cal.4th 376, 384–85.)

In support of its motion, defendant provides the Arbitration Agreement that is signed by all parties. (Decl. Kyle Kvick, Exh. A.) The arbitration agreement applies to "any and all claims arising out of or related to your employment involving Employee on the one hand, and Teamwork HR and/or Worksite Employer on the other hand, that would otherwise be brought in a court of law, including but not limited to, claims of unlawful harassment or discrimination, wrongful demotion, defamation, wrongful discharge, failure to pay wages, breach of contract, or invasion of privacy, shall be submitted to final and binding arbitration, and not to any other forum." (*Id.*, ¶ 1.) The agreement specifies it is "governed by and interpreted under the Federal Arbitration Act and the applicable laws of the State of California." (*Id.*, ¶ 8.) The agreement also contains an opt-out provision whereby the employee may revoke acceptance of the arbitration agreement within 30 days. (*Id.*, ¶ 11.)

Here, the disputes are governed by the broad language of the Arbitration Agreement, which both parties acknowledge. The agreement also expressly applies to failure to pay wages, which forms the basis of several of plaintiff's causes of action. The Federal Arbitration Act applies, as expressly outlined in the Arbitration Agreement and the additional evidence defendant provides about the employer's effects on interstate commerce. (Decl. Kyle Kvick, Exh. A, ¶ 8; Decl. Brian Place.) For the foregoing reasons,

defendant made a sufficient showing of a valid and enforceable arbitration agreement between the parties. Plaintiff fails to demonstrate any defense to enforcement, and in fact concedes enforceability as to her individual claims.

Accordingly, defendant's motion to compel arbitration is granted. The claims alleged by plaintiff in this action, except for plaintiff's claims under the Labor Code Private Attorneys General Act of 2004 (PAGA), shall be arbitrated pursuant to the binding arbitration agreement between the parties. Defendant's motion to dismiss is denied. The action is stayed pending the outcome of the arbitration.

The case management conference set February 27, 2023 is hereby vacated. The court sets an Order to Show Cause re status of arbitration on **June 26, 2023 at 3:30 p.m. in Department 40**. The parties shall file declarations regarding the status of the arbitration proceedings at least five (5) court days prior to the order to show cause hearing.

16. S-CV-0048789 Cummings, Anthony v. Dedauex, Clayton

This tentative ruling is issued by **Commissioner Michael A. Jacques**. If oral argument is requested, it will be heard on **January 5, 2023 at 8:30 a.m. in Department 40.**

Motion for Attorney's Fees

Petitioner's request for judicial notice is granted.

Petitioner seeks attorney's fees in the amount of $2,178, claiming 6.6 hours at an hourly rate of $330. Petitioner had filed a request for civil harassment restraining order, which the court granted against respondent. Thereafter, respondent filed an application to terminate the restraining order, which the court denied. As petitioner is the prevailing party in this action, the court may award petitioner attorney's fees and costs under Code of Civil Procedure section 527.6(s). The court chooses to exercise its discretion and awards attorney's fees for the cost of defending respondent's request to terminate the restraining order.

The court has carefully reviewed the declaration of counsel Michael W. Thomas and billing statements attached thereto supporting 4.6 hours expended at an hourly rate of $330, which the court finds reasonable. The court further finds reasonable an additional 2 hours at the same rate for filing the instant motion. The motion for attorney's fees is granted in the amount of $2,178 and costs of $60.

17. S-CV-0048841 Lester, Judith Diane v. Barron, Cheryl

Appearance is required on January 3, 2023, at 8:30 a.m. in Department 31. The court notes that defendants' notice of motion does not comply with Local Rule 20.2.3(C) as it fails to include notice of the court's tentative ruling procedures.

Motion to Strike Punitive Damages in the Complaint

Defendants John Panelli, Paula Panelli Wright and Jeffrey Panelli move to strike plaintiff's claims for punitive damages.

To support a prayer for punitive damages, plaintiff must allege ultimate facts supporting a finding of oppression, fraud or malice on the part of the defendant. Civil Code § 3294(a). A claim for punitive damages cannot be pled generally, and conclusory allegations characterizing a defendant's conduct as deliberately and maliciously intended to harm are insufficient. *Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872. The allegations of plaintiff's complaint do not support a claim for punitive damages against moving defendants. Further, plaintiff failed to oppose the motion, which suggests that she has abandoned this claim. Accordingly, the motion is granted without leave to amend. Plaintiff's demands for punitive damages against defendants John Panelli, Paula Panelli Wright and Jeffrey Panelli, as set forth in Paragraph 160 and the prayer for relief, are hereby stricken. Moving defendants shall file their answer to the complaint on or before January 20, 2023.

18. S-CV-0048996 Tucker, Carinay v. Nat'l Default Servicing Corp.

Motion to Consolidate

Carinay Tucker, plaintiff in S-CV-0048996 and defendant in M-CV-0082034, moves to consolidate these two cases. The former is an anti-foreclosure case alleging three causes of action: (1) a violation of Civil Code section 2924m, (2) elder financial abuse, and (3) declaratory relief. The latter is an action for residential unlawful detainer against Tucker and another defendant. The court may order consolidation of actions involving a common question of law or fact. (Code Civ. Proc., § 1048, subd. (a).) Here, both matters involve the same real property known as 8021 Eagle View Lane, Granite Bay, CA 95746. Tucker contends she is entitled to continued possession of the premises as equitable or legal owner of the subject property by virtue of her having been deemed the last and highest bidder as a statutorily eligible tenant buyer under Civil Code section 2924m. The court finds there are common issues of fact and law between these two cases.

"[T]itle issues generally cannot be raised in unlawful detainer actions. [Citation.] 'However, where title is acquired through [section 1161a proceedings], courts must make a limited inquiry into the basis of the plaintiff's title.' [Citation.]" (*Struiksma v. Ocwen Loan Servicing, LLC* (2021) 66 Cal.App.5th 546, 554, citations omitted.) When "an unlawful detainer proceeding and an unlimited action concerning title to the property are simultaneously pending, the trial court in which the unlimited action is pending may stay the unlawful detainer action until the issue of title is resolved in the unlimited action, or it may consolidate the actions. [Citation.]" (*Martin-Bragg v. Moore* (2013) 219 Cal.App.4th 367, 385, citing Friedman et al., Cal. Practice Guide: Landlord-Tenant (The Rutter Group 2012).) Here, while Ms. Tucker would be afforded a limited inquiry into title in the unlawful detainer matter, it appears to the court she would not be able to present a full defense without the relief sought.

For the foregoing reasons, the motion to consolidate is granted. S-CV-0048996 is ordered consolidated with M-CV-0082034 and the lead case is designated as S-CV-0048996.

Black Rock Real Estate Investments, LLC ("Black Rock") requests the court order Ms. Tucker to make a deposit pursuant to Code of Civil Procedure section 1170.5(c) to account for the delay. However, such an order must be premised on a finding that there is reasonable probability that Black Rock will prevail. The court cannot make such a finding at this time, and the request is denied without prejudice.

19. S-CV-0049379 State Farm Ins. Co. v. Hoy, Joseph M

The motion to compel arbitration is continued to **Tuesday, January 10, 2023 at 8:30 a.m. in Department 31**. The court apologizes to the parties for the inconvenience.
